

REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application.

I. Restriction

Applicants hereby elect to prosecute the invention set forth in claims 1-9. Applicants have cancelled claims 10-21 without prejudice or disclaimer and reserve the right to file a divisional application.

II. Rejection Under 35 USC §112, Second Paragraph

The Examiner has rejected claims 4-7 under 35 USC §112, second paragraph and alleges that the claims are indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In view of the Examiner's comments, particularly with respect to claims 4, 5, and 6, Applicants have amended the claims in order to directly respond to the Examiner's suggestions. In view of this, it is respectfully submitted that the amended claims are in compliance with 35 USC §112 and that any rejections made under the same should be withdrawn and rendered moot.

III. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1-3 as being anticipated by either one of Perech, U.S. Patent No. 2,863,775 (hereinafter '775) or Seltzer et al., U.S. Patent No. 2,975,057 (hereinafter '057). In the rejection, the Examiner mentions, in summary, that either of

the references disclose heating a tea extract under temperatures as called for in the instant claims. In view of this, the Examiner believes that the novelty rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

Independent claim 1, as amended, is directed to a method for making a beverage whereby the method comprises the steps of (a) heating a beverage extract within a beverage brewing machine to produce a heated beverage extract; and (b) mixing the heated beverage extract with a solvent to produce a beverage on demand.

The method of claim 1 is further defined by the dependent claims which claim, among other things, that the beverage extract is a tea extract and that the extract is heated from a temperature of about 40°C to about 100°C.

In contrast, the '775 reference merely discloses a process for producing an improved water soluble oxidized tea extract wherein the tea extract is heated at an elevated temperature below the boiling point of water and in contact with an oxygenous atmosphere for at least one hour so that water soluble constituents are oxidized in the aqueous extract medium.

The '057 reference is directed to a process wherein green tea extract is converted to black tea extract. In the process, a tea leaf mixture in the presence of oxygen is heated

to a temperature below about 100°F for a time period sufficient to achieve a desired degree of color, flavor and aroma.

Neither the '775 reference nor the '057 reference even remotely describes the process set forth in claims 1-3 of the present invention, as amended. This is true because the present invention is directed to a method for making a beverage wherein a beverage extract is heated within a beverage brewing machine and mixed with a solvent to produce a beverage on demand. These important limitations are not, even remotely, described in the '775 reference or the '057 reference. In view of this, it is clear that all the limitations set forth in the presently claimed invention are not found in a single reference, namely the '775 reference or the '057 reference. Thus, it is fundamentally improper to reject claims 1-3 under 35 USC §102(b). For these reasons, Applicants request that the novelty rejection be withdrawn and rendered moot.

IV. Rejection Under 35 USC §103

The Examiner has rejected claims 4-9 under 35 USC §103 as being unpatentably over either one of Seltzer et al. (the '057 reference) or Perech (the '775 reference).

In the rejection, the Examiner mentions, in summary, that the claims of the present invention call for specific amounts of heated solvent and for the resulting beverage to be a translucent tea. Nevertheless, the Examiner believes that heating, the production of a translucent tea, as well as amounts of solvent are obvious. Therefore, the Examiner believes that the obvious rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above described for at least the following reasons.

As already made of record, independent claim 1 (which claims 4-9 depend on) is directed to a method for making a beverage within a beverage brewing machine wherein (a) a beverage extract is heated to produce a heated beverage extract; and (b) the heated beverage extract is mixed with a solvent to produce a beverage on demand.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, the temperature that the beverage extract is heated to, the particular type of solvent, solvent temperature, solvent amount, the appearance of the resulting beverage, and the amount of extract within the resulting beverage.

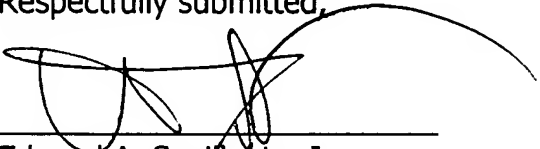
As already made of record, the '057 reference is merely directed to a process for converting green tea extract to black tea extract. Nothing in the '057 reference describes a method for making a beverage on demand by heating a beverage extract within a beverage brewing machine. Moreover, as to the '775 reference, the '775 reference is merely directed to a process for producing an improved water soluble oxidized tea extract by heating, among other things, tea leaves for at least one hour to produce water soluble constituents oxidized in an aqueous extract medium. Similar to the '075 reference, the '775 reference does not, even remotely, teach, suggest, or disclose a method for making a beverage wherein a beverage extract is heated within a beverage brewing machine that produces the desired beverage on demand.

In view of the above, it is clear that no combination of references relied on by the Examiner even remotely teaches, suggests or discloses any of the claimed limitations set forth in the present invention as now amended. Thus, it is clear that the 35 USC §103 rejection is improper and must be withdrawn.

In view of the above, Applicants respectfully request that claims 1-9 be passed to issue. Reconsideration and favorable action are earnestly solicited.

In the event the Examiner has any questions concerning the present patent application, he is kindly invited to contact the undersigned at his earliest convenience.

Respectfully submitted,



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